A & C Healthcare Services, Inc. *and* Service Employees International Union, United Healthcare Workers-West. Cases 20–CA–33588 and 20–CA–33780

June 8, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On July 18, 2008, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited exceptions, a brief in support of his exceptions, and a brief in support of the judge's decision. The Respondent and the General Counsel also filed separate answering briefs to the other party's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions, limited exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, A & C Healthcare Services, Inc., Millbrae, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter the subsequent paragraph accordingly.

"(b) Failing and refusing to recognize and to bargain in good faith with the Union as the collective-bargaining representative of the unit employees."

2. Substitute the following for paragraph 2(a).

"(a) On request of the Union, rescind any departures from terms and conditions of employment that, absent the Respondent's unilateral conduct, would have existed for employees on November 8, 2007, as set forth in the remedy section of this decision."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 8, 2009

_____

Wilma B. Liebman, Chairman

_____

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change wages, hours, and other terms and conditions of employment of employees without first giving notice to and bargaining with the Service Employees International Union, United Healthcare Workers-West (Union) in the following appropriate unit:

All employees performing work covered by the collective-bargaining agreement between Pleasant Care and

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed __ U.S.L.W. __ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

Because Member Schaumber agrees with the judge that it makes no difference in this case whether the Respondent is a "perfectly clear successor" employer, he finds it unnecessary to pass on the judge's comments in his decision at pars. 9–11 of sec. "C. Analysis and Conclusions."

We shall modify the recommended Order by adding new par. 1(b) to include the standard remedy for the judge's 8(a)(5) finding based on the Respondent's refusal to recognize and bargain with the Union until January 2008. We shall also modify the recommended Order to reflect the judge's proposed remedy for the Respondent's unlawful unilateral changes. We will also substitute a new notice to conform to the Order as modified.

the Union effective October 1, 2006 through June 15, 2008.

WE WILL NOT fail and refuse to recognize and to bargain in good faith with the Union as the collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coercive you in the exercise of the rights set forth above.

WE WILL, on request of the Union, rescind any departures from terms and conditions of employment that, absent our unilateral conduct, would have existed for employees on November 8, 2007, as set forth in the remedy section of this decision.

WE WILL, on request of the Union, bargain collectively with the Union as the exclusive representative of the employees in the unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if agreement is reached, embody such agreement in a signed document.

A & C HEALTHCARE SERVICES, INC.

Micah Berul, Esq., for the General Counsel.
Robert M. Cassel, Esq., of Mill Valley, California, for the Respondent.
Bruce Harland, Esq. (Weinberg, Roger & Rosenfeld), of Alameda, California, for the Union.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice a hearing in this matter was held before me in San Francisco, California, on April 21, 2008. The charges were filed by Service Employees International Union, United Healthcare Workers-West (the Union) on September 18, 2007, and January 23, 2008, respectively. Thereafter, on March 26, 2008, the Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing alleging violations by A & C Healthcare Services, Inc. (Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (the General Counsel) and counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation with two nursing home facilities in the State of California, including the facility herein located in Millbrae, California, is engaged in the business of providing residential nursing care to patients. In the course and conduct of its business operations the Respondent annually derives gross revenues in excess of $100,000, and annually purchases and receives at its California facilities goods and services valued in excess of $5000 which originated outside the State of California. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Union is and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The principal issue in this proceeding is whether the Respondent, as a successor employer, unilaterally changed employees' preexisting terms and conditions of employment without bargaining with the Union, in violation of Section 8(a) (5) and (1) of the Act.

B. Facts

The facts in this proceeding, which were largely stipulated, are not in material dispute. In July, 2007,[2] the Respondent, a licensed nursing home owner/operator, purchased the predecessor's nursing home facility as the low bidder in a bankruptcy auction. The Order of the Bankruptcy Court, Central District of California (Los Angeles Division), is the underlying document setting forth the parameters of the transaction and the respective obligations of the buyer (Respondent) and seller (Predecessor). The Bankruptcy Court retained jurisdiction of the entire purchase/transfer process until such time as the Respondent acquired the proper state license and thereby replaced the predecessor as the legal owner/operator of the facility. The sequence by which the Respondent would first become the interim operator of the facility under the predecessor's California State operating license, and subsequently would become the legal owner/operator of the facility upon obtaining its own operating license, is set forth, inter alia, in a separate document between the Respondent and predecessor entitled operations transfer agreement (OTA), also subject to the approval of the Bankruptcy Court.

The Respondent assumed interim operation of the facility on August 8, on which date the Respondent's principals personally

[1] The General Counsel's posthearing motion to strike portions of Respondent's brief is denied, however matters discussed in the brief that are not part of the record have been disregarded. Respondent's posthearing motion to strike references to certain cited cases in the General Counsel's brief is denied.

[2] All dates or time periods hereinafter are within 2007, unless otherwise noted.

informed all the individuals employed by the predecessor, including managers and supervisors, that they were immediately being hired by the Respondent on a 90-day probationary basis. Further, the Respondent told the nonsupervisory employees that they would continue to receive their regular pay but would not receive health or other benefits. This announcement effectively modified the employees' then-current wages, hours, and benefits, which were established and set forth in a collective-bargaining agreement between the Union and predecessor, extending from October 1, 2006, until June 15, 2008. It was stipulated that the Respondent did not state to the employees it was setting "initial terms and conditions of employment."

Upon assuming operations of the facility, the Respondent continued to provide residential nursing care to patients at the facility in essentially unchanged form from the predecessors' operations, and with the same employee complement.

On November 8, coinciding with the end of the 90-day probationary period, the Respondent informed all but 6 of the 85 nonsupervisory/managerial employees who had been previously employed at the facility by the predecessor, that they had passed their probationary period and were eligible to become, and did become, permanent employees.

Also on November 8, the Respondent announced and unilaterally established terms and conditions of employment covering wages, holidays, health insurance, overtime, sick leave, and no-call/no-show policy, to all assembled workers who had passed probation and wished to be employed in permanent regular positions.

The complaint alleges and the Respondent admits that on about September 14, during the probationary period and prior to the aforementioned November 8 announcement of terms and conditions of employment, the Union requested that Respondent recognize and bargain collectively with the Union as the collective-bargaining representative of the unit employees. The Respondent apparently did not reply to this request for several months during which period its license application was pending. Then, on Monday, December 3, it advised the Union by letter that it would agree to recognize the Union conditionally, provided that:

> 1) Respondent had been licensed by the Department of Health and thereby able [sic] to close its purchase of the Facility; 2) employ persons directly as a healthcare employer; 3) and a majority of employees currently employed were previously bargaining unit employees of the former employer.

Further, the Respondent offered, subject to the above conditions, to meet and bargain with the Union on January 3, 2008.

Prior to January 3, 2008, the Respondent had been granted the appropriate license by the Department of Health, and its purchase of the facility had been consummated. On January 3, 2008, the Respondent recognized the Union as the exclusive collective-bargaining representative of the unit employees employed by the Respondent. On about January 15, 2008, the Respondent issued an employee handbook which unilaterally establishes wages, hours, and working conditions that are apparently different from and/or in addition to those previously announced to the employees on November 8, supra. The parties held bargaining sessions on January 15 and 30, March 7, and April 4, 2008.

C. Analysis and Conclusions

The complaint alleges and the General Counsel and Union argue that the Union became a *Burns*[3] "perfectly clear" successor on August 8, when it hired all the unit employees employed by the predecessor on a probationary basis without simultaneously setting their initial, i.e. nonprobationary, terms and conditions of employment upon becoming permanent employees; therefore, although *Burns* makes it clear that the Respondent, as a successor employer, assumes no contractual relationship with the Union, it is nevertheless obligated to negotiate with the Union regarding initial terms and conditions of employment that differ from those previously enjoyed by the employees, as set forth in the collective-bargaining agreement.

The Respondent maintains that this case is unique and that all prior cases under *Burns* are readily distinguishable because they do not arise in a bankruptcy setting. First, it is argued that the Bankruptcy Court's Order specifically addresses the issue of successorship, and precludes the finding that the Respondent is a successor under the Act. Thus, the Bankruptcy Court's Order states, at paragraph 8:

> Except for unexpired leases and executory contracts to be assumed by the Debtors and assigned to the buyer [Respondent], the buyers shall not be assuming any of the Debtors' [predecessor's] liabilities. The buyers are not successors of the Debtors, and the buyers shall have no successor liability as a result of purchasing any of the Debtors' facilities.[4]

The Respondent's brief is silent regarding the meaning and intent of this language, or its significance and implications vis-à-vis a successor employer's obligations under the Act. The quoted language simply appears to immunize the Respondent from the debtor's contract liability unless the Respondent specifically becomes a party to the contract, and further, appears to immunize the Respondent from the debtor's tort liability attendant to lawsuits that may have been brought or could be brought against the debtor. This language appears to have no bearing whatsoever regarding the Respondent's relationship to the Union, which, as noted in *Burns*, is not a contractual relationship. Accordingly, as the Respondent has not demonstrated that the language is pertinent to the issues herein, I find no merit to the Respondent's argument.

Next, the Respondent maintains that its successorship status did not begin when it took over the operation of the facility on August 8, because it was merely the interim operator until such time as it obtained its own operating license. In *Golden Cross Health Care of Fresno*, 314 NLRB 1201, 1205–1206 (1994), the Board found, under similar circumstances, that successorship status commenced when the employer began operating the facility; thus, although legal ownership of the facility had not yet been transferred and the employer's operating license had not yet been granted, the record evidence supported the finding

[3] *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972).

[4] The Court's Order deals with multiple debtor entities and multiple buyer entities; hence the plural designations.

of a "respectable certainty" that these eventualities would, in fact, occur. The Respondent has not demonstrated that obtaining the new operating license or completing the transfer of ownership of the property was in jeopardy or problematical or less than a "respectable certainty" at the time it became the interim operator of the facility.[5] Therefore, I find this argument of the Respondent to be without merit.

Assuming arguendo that it became a successor on August 8, the Respondent contends that is not a *Burns* successor but rather a *Spruce Up*[6] successor because on that date it did in fact establish initial terms and conditions of employment by hiring the predecessor's employees at their current wage rate, but as probationary employees with no benefits. Thus, the Respondent states in its brief:

> There is no evidence herein R [Respondent] had failed to clearly offer its initial terms and conditions on August 8th. The only employment being offered on that date to all R employees (including supervisors and management staff) pursuant to the OTA was probationary employment for a 90 day period which if successful would provide eligibility for permanent employment on wages and benefits to be announced on or before the expiration of the 90 day period.

In *Windsor Health Care*, the administrative law judge essentially subscribed to a similar argument, finding the successor employer, upon hiring the predecessor's employees as "temporary employees," and later unilaterally setting initial terms and conditions of employment, was not a *Burns* successor because:

> As the Board noted in *Spruce Up*:
>
> When an employer who has not yet commenced operations announces new terms prior to or simultaneously with his invitation to the previous work force to accept employment under those terms, we do not think it can fairly be said that the new employer "plans to retain all of the employees in the unit," as that phrase was intended by [*Burns*].
>
> When the possibility that the predecessor's employees may not enter into an employment relationship with the new employer is a real one, the Board does not consider it "perfectly clear" that the new employer "plans to retain all of the employees in the unit." Ibid.[7] Here, Respondent informed the Candlewood applicants that they would be employed only in a temporary or probationary status for 90 days. That should have signaled to the applicants that terms and conditions of employment with Respondent were not going to be identical with those of its predecessor, and they could have declined employment upon learning they would have to complete a probationary period.
>
> Thus, . . . Respondent did not violate the Act by setting initial terms of employment. Contrast *Elf Atochem North America, Inc.,* 339 NLRB 796 (2003) (employer a "perfectly clear" successor when it informed employees it would provide them employment, recognize their seniority, and grant equivalent salaries and benefits).

However the Board disagreed with this rationale and came to the opposite conclusion, as follows:

> Turning to the instant case, the judge, applying *Spruce Up*, found that the *Burns* "perfectly clear" exception does not apply because the Respondent informed Candlewood applicants that they would be employed only in a temporary or probationary status. This, the judge reasoned, "should have signaled" to them that their terms and conditions of employment would change, thus raising the possibility that some might decline employment and rendering the "perfectly clear" exception inapplicable.
>
> We disagree. Although the Respondent did subject former Candlewood employees to what amounted to a probationary period, we nonetheless find, applying *Spruce Up*, that the *Burns* "perfectly clear" exception does apply because the Respondent "failed to clearly announce its intent to establish a new set of conditions prior to inviting former [Candlewood] employees to accept employment." [Footnote omitted.] 209 NLRB at 195.

Thus, the Board in *Windsor* determined that simply hiring employees on a probationary basis, without clearly advising them of an intent to establish a new set of conditions of employment, is insufficient to create the inference that employees might decline employment; therefore, for purposes of determining union majority, their probationary status is immaterial.

It seems unclear whether the Board in *Windsor* has directly addressed the precise issue presented here by the Respondent, namely, whether an offer of 90-day probationary employment, *during which the employees will be receiving no health insurance or continuation of other contractual benefits previously enjoyed,* constitutes an announcement and establishment of new terms and conditions of employment within the meaning and rationale of *Spruce Up*.[8] In other words, is there a real possibility that the Respondent's changes to the employees' current conditions of employment are sufficient to cause them to reject the offer of *probationary* employment and seek employment elsewhere? If so, then, under *Spruce Up*, the Union's majority status remains uncertain until sometime after August 8.[9]

[5] The fact that the Respondent had been previously licensed to operate and was operating another nursing home in the State of California, and, in addition, Secs. 16 and 17 of the Court's Order that provide for forfeiture of the Respondent's deposit and purchase price if the Respondent fails to obtain the appropriate license or to consummate the transaction in the manner required, are strong indicators of the Respondent's certitude that the license would be granted and the transaction consummated.

[6] *Spruce Up Corp.*, 209 NLRB 194 (1974).

[7] Id.

[8] Thus, in *Windsor,* it appears the employees were initially told only that they would be hired as "temporary employees" and were later advised that they would no longer have their previous benefits during their probationary period.

[9] In this regard, the Respondent would apparently argue that in a bankruptcy setting the employees could have reasonably anticipated benefits inferior to what they had received under the predecessor's tenure, and such lowered expectations would cause them to decline the probationary offer of employment and/or seek other employment in the interim. However it seems equally probable that, as experienced long-time employees who were familiar with the patients and their needs, the

The Respondent assumes that it's bargaining obligation attached only after the 90-day probationary period had expired on November 8, at which time it retained a majority of the former unit employees; thus, during the probationary period the employees' status as permanent employees was merely tentative. However, as noted, the Board in *Windsor* has found, in effect, that the status of former permanent employees, who are initially hired by a successor employer as temporary or probationary employees, is not changed for purposes of determining union majority.

The Respondent maintains that because it purchased the predecessor through a bankruptcy auction, it's principles had only limited opportunity to learn about the facility prior to the purchase, and had been unable to perform a thorough "due diligence" investigation customarily attendant to the purchase of an ongoing business enterprise. Further, the Respondent maintains it had no access to the facility or information about the employees until the Respondent's principals walked through the door on August 8, and hired the employees sight unseen, not knowing the condition of the facility, the competence and qualifications of the employees or of the administrative/supervisory staff, or the physical needs of the patients. Accordingly, the Respondent suggests that under these circumstances, particularly because it had been unable to preevaluate the qualifications and competence of the employees and staff, it was not a "perfectly clear" *Burns* successor on August 8; thus, to presume on August 8, that a majority of the employees would survive the probationary screening process or ultimately become permanent employees is simply an unrealistic presumption under the circumstances.

There is no record evidence indicating the extent of the Respondent's information concerning the facility, its supervisors, administrators and employees, prior to August 8, and therefore the Respondent's arguments in its brief on this point are unsupported by record evidence. What is clear however, is that the Respondent's negotiations with the predecessor culminated in the execution of the aforementioned operations transfer agreement on July 26, a detailed document consisting of some 21 pages, including provisions pertaining to the hiring "on a probationary basis, each Facility Employee who elects to accept employment with New Operator. . . ."[10]

The record is devoid of any evidence showing that the facility was other than a functioning health care institution, operating with the proper license in accordance with and under the scrutiny of applicable governmental agencies, and subject to strict requirements and safeguards for the care and safety of its patients. The fact that the facility was purchased through a bankruptcy auction may be relevant to its profitability,[11] but it is not relevant to the qualifications or competency of the predecessor's employees or staff. Accordingly, there seems to be no compelling reason to conclude that the employee complement inherited by the Respondent was generally less qualified and more likely to be replaced than any other complement of employees; or to conclude that a special exception, under *Burns* and its progeny, should be carved out for successors who elect to acquire businesses through bankruptcy auctions.

However, under the circumstances herein, it seems to make no difference whether the Respondent is a *Burns* "perfectly clear successor." Assuming arguendo the Respondent was not a *Burns* "perfectly clear" successor on August 8, it is necessary to determine the date the Respondent's bargaining obligation begins. I find that clearly this date was prior to the expiration of the 90-day probationary period. Insofar as the record shows, not one employee voluntarily left the Respondent's employ during his or her probationary period; nor, insofar as the record shows, did the Respondent hire any new employees during this period. Further, there is no evidence that the Respondent intended to discharge a majority or even a substantial number of the former employees and replace them at the end of the probationary period. Thus, the employee complement was not in a state of flux during this period, and the Respondent's argument that its employee complement was indeterminate until November 8, is not supported by the record evidence, as it clearly knew prior to November 8, the number of employees it intended to discharge and, if necessary, replace. Accordingly, the Respondent's permanent employee complement and the Union's majority status having been established prior to November 8, I find that its bargaining obligation attached at some point between September 14, the date the Union requested that Respondent recognize and bargain collectively with the Union,[12] and prior to November 8, the date when the Respondent unilaterally established terms and conditions of employment for its then permanent employee complement.

On the basis of the foregoing, I conclude that the Respondent's refusal to recognize and bargain with the Union from sometime prior to November 8 until January 8, 2008, is violative of Section 8(a)(5) and (1) of the Act, as alleged. I further conclude that the changes to the employees' terms and conditions of employment made on and after November 8, constituted unilateral changes in violation of Section 8(a)(5) and (1) of the Act, as alleged.

The complaint also alleges that the Respondent unlawfully withdrew recognition from the Union. The parties stipulated that during the January 30, 2008 bargaining session the Respondent withdrew recognition from the Union, but rescinded this withdrawal of recognition the following day. The record contains no further evidence regarding this matter. As represented by Respondent's attorney during his opening statement

Respondent would make every effort to retain their services by offering them substantially the same benefits they previously enjoyed at the expiration of the probationary period. Accordingly, the one postulate is not more probable that the other.

[10] The Respondent suggests that the hiring of the employees on a probationary basis was in effect mandated by the Bankruptcy Court. It seems clear, however, that this hiring arrangement was voluntarily negotiated between the Respondent and predecessor, and was not imposed by the Bankruptcy Court.

[11] However, many facilities of the predecessor were simultaneously sold as a part of the same bankruptcy proceeding, and it does not necessarily follow that the facility in question was contributing to the overall financial indebtedness of the predecessor.

[12] As the Union did not request recognition until September 14, it appears the Respondent had no bargaining obligation until that date.

at the hearing, something occurred during the January 30 bargaining session that caused him to lose his temper and to abruptly withdraw recognition. Under the circumstances, the Respondent's conduct is tantamount to one party simply walking out in the middle of a bargaining session, certainly not an uncommon occurrence during the sometimes contentious course of bargaining. The fact that the Respondent immediately rescinded such conduct and thereafter resumed bargaining is, in effect, an admission of error. Nor is there any evidence that this conduct impacted subsequent bargaining. Under the circumstances, I shall dismiss this allegation of the complaint.[13]

CONCLUSIONS OF LAW AND RECOMMENDATIONS

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) of the Act as found herein.

THE REMEDY

Having found that the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act, I recommend that, on request of the Union, the Respondent be required to rescind any departures from terms and conditions of employment that, absent the Respondent's unilateral conduct, would have existed for permanent employees on November 8, 2007. I further recommend that the Respondent retroactively restore such terms and conditions of employment until such time as the parties reach a collective-bargaining agreement or a bargaining impasse.[14] See, generally, *Planned Building Services*, 347 NLRB 670 (2006); *Windsor Convalescent Center of North Long Beach,* 351 NLRB 975 (2007).

I shall also recommend that the Respondent be required to cease and desist from making unilateral changes, and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Finally, I shall recommend the posting of an appropriate notice, attached hereto as "Appendix."

[13] *Passavant Memorial Hospital*, 237 NLRB 138 (1978), cited by the General Counsel, is inapposite.

[14] The matter of the Respondent's health care obligations is yet an open issue. Thus, in the operations transfer agreement, sec. 2.5(f), the Respondent is required to establish and maintain a group healthcare plan for the general benefit of it its employees and their dependents. Accordingly, contrary to the position of the General Counsel, the Respondent may not have any continuing obligation under the prior group healthcare plan, as this matter is governed by the OTA; and, in addition, whether the new healthcare plan may be deemed an initial term and condition of employment not subject to the Respondent's bargaining obligation is another matter for consideration in a compliance proceeding.

ORDER[15]

The Respondent, A & C Healthcare Services, Millbrae, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing wages, hours, and other terms and conditions of employment of employees without first giving notice to and bargaining with the Union in the following appropriate unit:

> All employees performing work covered by the collective-bargaining agreement between Pleasant Care and the Union effective October 1, 2006 through June 15, 2008.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act.

(a) On request of the Union, rescind any departures from terms and conditions of employment that existed prior to commencing operations at the facility on August 8, 2007, retroactively restoring preexisting terms of employment, as set forth in the remedy section of this decision.

(b) On request of the Union, bargain collectively with the Union as the exclusive representative of the employees in the unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if agreement is reached, embody such agreement in a signed document.

(c) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Regional Office, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 18, 2008

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change wages, hours, and other terms and conditions of employment of employees without first giving notice to and bargaining with the Union in the following appropriate unit:

All employees performing work covered by the collective-bargaining agreement between Pleasant Care and the Union effective October 1, 2006, through June 15, 2008.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request of the Union, rescind any departures from terms and conditions of employment that existed prior to commencing operations at the facility on August 8, 2007, retroactively restoring preexisting terms of employment, as set forth in the remedy section of this decision.

WE WILL, on request of the Union, bargain collectively with the Union as the exclusive representative of the employees in the unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if agreement is reached, embody such agreement in a signed document.

A & C HEALTHCARE SERVICES, INC.